



5001-06-P

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 247 and 252**

**[Docket DARS-2019-0032]**

**RIN 0750-AK08**

**Defense Federal Acquisition Regulation Supplement: Repeal of DFARS Clause "Price Adjustment" (DFARS Case 2018-D048)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove a clause that is no longer necessary.

**DATES:** Effective [Insert date of publication in the FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Ms. Carrie Moore, telephone 571-372-6093.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD is amending the DFARS to remove DFARS clause 252.247-7001, Price Adjustment, and the associated clause prescription at DFARS 247.270-4. Included in solicitations and contracts for stevedoring services when using sealed bidding, this clause:

requires a contractor to warrant that the prices in the contract apply to, based upon, and exclude certain criteria; requires a contractor to notify the Government of any changes to collective bargaining agreements that apply to its direct labor employees and will impact the contractor's cost to perform; limits the upward adjustment of prices to a stated percentage and clarifies the terms and process for making such adjustments; and, requires a contractor to provide a statement pertaining to rates of pay for labor with its final invoice under the contract.

DoD subject matter experts on the acquisition of stevedoring services across DoD advise that sealed bidding is not used to procure such services and, as such, this clause is not included in stevedoring contracts. Federal Acquisition Regulation (FAR) clauses 52.222-41, Service Contract Labor Standards; 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment (Multiple Year and Option Contracts); and 52.222-44, Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment; as well as DFARS clause 252.247-7002, Revision of Prices, adequately address price adjustments resulting from changes in wage rates or benefits and are currently included in stevedoring contracts, as applicable.

Since DFARS clause 252.247-7001 is not used and other FAR and DFARS clauses can be used to provide the necessary information to contractors performing on stevedoring contracts, this DFARS

clause is no longer necessary and can be removed. The removal of this DFARS text supports a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the President signed Executive Order (E.O.) 13777, "Enforcing the Regulatory Reform Agenda," which established a Federal policy "to alleviate unnecessary regulatory burdens" on the American people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS. A public notice of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the *Federal Register* at 82 FR 35741 on August 1, 2017, and requested public input. No public comments were received on this clause. The DoD Task Force reviewed the requirements of DFARS clause 252.247-7001, Pricing Adjustments, and determined that the DFARS coverage was unnecessary and recommended removal.

## **II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items**

This rule only removes obsolete DFARS clause 252.247-7001, Pricing Adjustments. Therefore, the rule does not impose any new requirements on contracts at or below the simplified

acquisition threshold and for commercial items, including commercially available off-the-shelf items

### **III. Publication of This Final Rule for Public Comment Is Not Required by Statute**

The statute that applies to the publication of the FAR is Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because DoD is not issuing a new regulation; rather, this rule is merely removing an obsolete clause from the DFARS.

### **IV. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety

effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

#### **V. Executive Order 13771**

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

#### **VI. Regulatory Flexibility Act**

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section III. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

#### **VII. Paperwork Reduction Act**

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies. This rule affects the information collection requirements in DFARS clause 252.241-7001, Price Adjustment, currently approved under OMB Control Number 0704-0245, entitled "Defense Federal

Acquisition Regulation Supplement (DFARS) Part 247,  
Transportation, and associated clauses at DFARS 252.247.”  
However, the reduction in burden and savings is negligible.

**List of Subjects in 48 CFR Parts 247 and 252**

Government procurement.

**Jennifer Lee Hawes,**

*Regulatory Control Officer, Defense Acquisition Regulations  
System.*

Therefore, 48 CFR parts 247 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 247 and 252  
continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

**PART 247—TRANSPORTATION**

2. Revise section 247.270-4 to read as follows:

**247.270-4 Contract clauses.**

Use the following clauses in solicitations and contracts for  
stevedoring services as indicated:

- (a) 252.247-7000, Hardship Conditions.
- (b) 252.247-7002, Revision of Prices, when using negotiation.
- (c) 252.247-7007, Liability and Insurance.

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**252.247-7001 [Removed and Reserved]**

3. Remove and reserve section 252.247-7001.

**252.247-7002 [Amended]**

4. Amend section 252.247-7002 introductory text by removing "247.270-4(c)" and adding "247.270-4(b)" in its place.

**252.247-7007 [Amended]**

5. Amend section 252.247-7007 introductory text by removing "247.270-4(d)" and adding "247.270-4(c)" in its place.

[FR Doc. 2019-13743 Filed: 6/27/2019 8:45 am; Publication Date: 6/28/2019]